

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DERRICK ANTHONY PETERSON,	:	
	:	
Petitioner	:	No. 4:CV-04-0831
	:	
vs.	:	(Petition Filed 4/16/04)
	:	
COMMONWEALTH OF PENNSYLVANIA	:	(Judge Muir)
	:	
Respondents	:	

ORDER
May 11, 2005

Background

On April 16, 2004, petitioner, Derrick Anthony Peterson, an inmate confined in Federal Correctional Institution, Fort Dix, Pennsylvania, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. By Memorandum and Order dated November 9, 2004, the petition for writ of habeas corpus was dismissed for lack of jurisdiction. (Doc. No. 18).

In a letter dated April 24, 2005, petitioner inquired as to the status of his case. (Doc. No. 19). A docket sheet and a copy of the Court's November 9, 2004, Memorandum and Order were forwarded to petitioner. On May 6, 2005, petitioner filed a motion to reinstate the time to file a notice of appeal, indicating that he had never received a copy of the Court's November 9, 2004 Order closing his case until April 29, 2005,

when he received the copy that was forwarded to him by the Court as a result of his April 24, 2005 inquiry. For the reasons set forth below, the petitioner's motion will be granted.

Discussion

Federal Rule of Appellate Procedure 4(a)(6) provides as follows:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

In the instant action, petitioner's motion to reinstate his appeal time has been filed within 180 days after the Court's final judgment in his case, as well as within 7 days of receiving notice of this Court's decision. In addition, the Court finds that petitioner was entitled to notice of the Court's decision and did not receive it within 21 days after entry. Finally, no party will be prejudiced by the reopening of

the appeal time. Thus, the motion will be granted.

IT IS HEREBY ORDERED that:

1. Petitioner's motion to reinstate the time to file a notice of appeal (Doc. No. 20) is GRANTED.
2. In accordance with Fed.R.App.P. 4(a)(6), petitioner shall have 14 days from the date of this order to file his notice of appeal.

s/Malcolm Muir

MUIR

United States District Judge